

**JOINT LEGISLATIVE SUNSET
REVIEW COMMITTEE FINDINGS AND
RECOMMENDATIONS**

**Review and Evaluation of the
Acupuncture Committee**

**Report to the
Department of Consumer Affairs**

APRIL, 1998

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM OF THE ACUPUNCTURE COMMITTEE

BACKGROUND AND DESCRIPTION OF THE COMMITTEE

History of acupuncture regulation and the Acupuncture Committee

Before acupuncture became regulated in California acupuncturists could be arrested and prosecuted for engaging in the unlicensed practice of medicine. As a result, acupuncturists and their patients organized and sought regulation to make the practice of acupuncture by acupuncturists legal.

In 1972, the California Board of Medical Examiners (now called the Medical Board of California) began regulating the practice of acupuncture under provisions which authorized the practice of acupuncture under the supervision of a licensed physician as part of acupuncture research in medical schools. Subsequently, that regulation was amended to allow acupuncture research to be conducted under the auspices of medical schools rather than just in medical schools.

In 1975, Senate Bill 86 (Moscone, Chapter 267) created the Acupuncture Advisory Committee (committee) under the Board of Medical Examiners (board) and allowed the practice of acupuncture but only upon the prior diagnosis or referral by a licensed physician, chiropractor or dentist. Thus in 1976 California became the eighth state to license acupuncturists. Subsequent legislation established acupuncture as a "primary health care profession" by eliminating the requirement for prior diagnosis or referral by licensed physician, chiropractor or dentist; and Assembly Bill 2424 (Keysor, Chapter 1398 - Statutes of 1978) authorized MediCal payments for acupuncture treatment. During this time acupuncture licensure and regulation was performed by the former Division of Allied Health Professions (DAHP) of the board.

In 1980, the law was amended to: abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the DAHP which allowed the committee more autonomous authority; expanded the acupuncturist's scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that oriental massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the board's fund. Most of these statutory changes became effective on January 1, 1982.

Consequently, in 1982, the Acupuncture Examining Committee became an autonomous agency (though still described as being "within the jurisdiction of the [Medical] board" - B&P Code Section 4928) with the authority to license and regulate acupuncturists. Except for the statutory requirement that all regulations adopted, amended or repealed by the committee shall be subject to the review and approval of the board (and one erroneous, reference to the "board" regarding approval of acupuncture schools that is statutorily authorized to be, and is, performed by the committee), the committee is authorized to perform all aspects of the licensure and regulation of acupuncturists.

The committee's name was changed to the Acupuncture Committee in 1990 to better reflect to licensees and the public that it was the state licensing entity for acupuncturists. (Originally, the title "Acupuncture Board" was proposed but dropped due to resistance from the medical profession.)

Committee Composition

The committee is composed of **11 members: 5 acupuncturists** with at least five years of acupuncture experience and not licensed as physicians, **2 licensed physicians** with two years of acupuncture experience, and **4 public members**. The Governor appoints the seven practitioner and two public members who are subject to Senate confirmation, and the Senate Rules Committee and the Assembly Speaker each appoint one of the two remaining public members. Committee members are appointed to a term of three years. Currently there is one physician board member vacancy which has persisted for a number of years - apparently indicating a difficulty in finding a satisfactory candidate with the requisite acupuncture experience to serve on the board.

The AC has an annual budget of approximately \$1.2 million and a staff of 7 full-time and 3 part-time positions including an exempt appointed Executive Officer, 4 analysts, 2 office technicians/assistants, 2 interpreters, and temporary help.

Committee regulation of the practice and practitioners

The Acupuncture Licensure Act (Business and Professions Code Sections 4925 - 4979) and its related administrative regulations (Title 16, California Code of Regulations, Sections 1399.400 et seq.) regulates both the practice of acupuncture and the use of professional titles by its practitioners. The AC licenses and regulates acupuncturists, establishes standards for and approves acupuncture training programs and schools, and establishes requirements and approves acupuncture tutorial programs. As part of its licensing function the AC also administers its own two part licensing examination, the California Acupuncture Licensing Examination (the CALE), composed of a written examination and a practical examination.

The scope of practice of acupuncture is defined in B&P Code Section 4937 to include acupuncture, prescribing and use of oriental massage, acupressure, breathing techniques, exercise, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health. "Acupuncture" is defined by B&P Code Section 4927 as the

stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion.

Exemptions: Physicians licensed by the Medical Board of California are authorized to practice acupuncture within their scope of licensed medical practice, with or without acupuncture training. Podiatrists licensed by the California Board of Podiatric Medicine and dentists licensed by the Board of Dental Examiners may also practice acupuncture as part of their respective licensed practices - if they have completed a course of instruction in acupuncture approved by their respective licensing boards. Further, the Acupuncture Act does not prohibit non-licensed persons from performing or prescribing oriental massage, breathing techniques, exercises, or nutrition to promote health so long as those activities are not performed or prescribed in connection with the practice of acupuncture.

Regulated practice terms and titles include: "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "oriental medicine," and similar words. Generally, licensed acupuncturists use the title Licensed Acupuncturist (L.Ac.) or Certified Acupuncturist (C.A.) Acupuncturists are prohibited from using the title "Doctor" or its abbreviation "Dr." unless licensed as such by the Medical Board. An acupuncturist who can document proof of an earned doctorate degree in oriental medicine may use the title Oriental Medical Doctor (O.M.D.) - but only in conjunction with other information reflecting his or her licensure as an acupuncturist (e.g., "L.Ac.")

AC program improvement efforts

Improvements noted by the Committee over the past few years have included: (1) Adoption of a Strategic Plan with goals and performance objectives; (2) Performance of an occupational analysis for the licensing examination in 1996; (3) Establishing a system to perform random audits for continuing education compliance; (4) Making changes in the administration of its practical examination in response to numerous complaints, and contracting with a new examination contractor to revise and administer that examination; (5) Anticipated elimination of one portion of the clinical examination (clean needle technique) as no longer necessary beginning next year; (6) Proposing, through regulation, the upgrading of the Tutorial Program to make it more equivalent to the current formal educational requirement for acupuncture school training.

Regulation in other states

According to the AC, relying on information from the National Acupuncture Foundation, 44 states currently regulate the practice of acupuncture in some fashion: 26 license, one certifies, and two register acupuncturists; and 16 specify that only physicians, osteopaths, chiropractors and or podiatrists may practice acupuncture. In some of the states, the authority to practice is restricted to acupuncture only, while other states permit an expanded scope of practice or the use

of other practice titles such as doctor of acupuncture (New Mexico) or acupuncturist physician (Florida). 6 states do not appear to regulate the practice of acupuncture.

California licenses approximately 3600 active practitioners (non-delinquent licensees), or approximately one-half of all practitioners in the U.S. Most licensed acupuncturists in California practice in private settings (private practice). Of the states that license acupuncturists, only California and Nevada administer their own licensing examination. According to the AC, because of the low number of practitioners in other states, the remaining states rely on an applicants' passage of the national exam administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).

The following provides the committee's **licensing data** for the past four years:

Total Licensed	Total: 4052	Total: 4503	Total: 4661	Total: 5140
Applications Received	Total: 352	Total: 352	Total: 654	Total: 364
Applications Denied	Total: 0	Total: 0	Total: 0	Total: 0
Licenses Issued	Total: 350	Total: 352	Total: 166	Total: 607
Renewals Issued	Total: 2918	Total: 3057	Total: 3290	Total: 1935*
Statement of Issues Filed	Total: 1	Total: 0	Total: 0	Total: 0
Statement of Issues Withdrawn	Total: 1	Total: 0	Total: 1	Total: 0
Licenses Denied	Total: 1	Total: 0	Total: 0	Total: 0
Licenses Granted	Total: 0	Total: 0	Total: 0	Total: 2
Conditional Licenses Granted	Total: 1	Total: 1	Total: 0	Total: 0
*Low numbers are a result of conversion to a biennial renewal.				

BUDGET AND STAFF

Current Fee Schedule and Range

The AC has an annual budget of approximately \$1.2 million derived primarily from various license fees paid by licensees, schools (for approvals and site visits), tutorial programs (approval and renewal thereof), and continuing educational course approval fees. The remainder of the AC's revenues come from interest, disciplinary cost recovery, and miscellaneous reimbursements (e.g., fingerprint checks.) Approximately 23% of the committee's budget goes for licensing-related activities, 40% go for exam-related expenditures, 29% goes for enforcement and discipline, and 8% goes for general administration. No General Fund monies are used to fund the operation of the AC.

As a result of legislation enacted in 1990, acupuncture licenses were issued on an annual basis until January 1, 1996, at which time they were converted to a biennial license. The license fees during that period were \$325 from 1991 through 1995. The AC reduced its fees to \$200/yr. in 1995. Since January 1, 1996, when the license period changed to a two-year period, the license fee has been \$325. No request for license fee increases are anticipated as the AC's fund is remaining relatively stable with an adequate reserve, although due to the conversion to a biennial

license (with all licenses expiring in 1996 and renewed until 1998), most existing licensee fee revenues will come in on alternate years. However, it appears that the AC has a significant delinquent licensee problem, accounting for about 8% of its licensee population (approximately 400 delinquent licensees.) Consequently, increasing the delinquent license renewal fee (currently only \$25), perhaps on a sliding scale over time such as is currently done for motor vehicle registration, may be warranted. Also, the committee may seek legislative authority to increase its examination fee - to more accurately pay for the committee's true exam costs.

The following is the schedule of the various revenue sources and fees for the AC:

Fee Schedule	Current Fee	Statutory Limit
Application Fee	\$ 75	\$ 75
Exam Fee	\$ 200	\$ 200
Original License Fee	\$ 325	\$ 325
Renewal Fee	\$ 325	\$ 325
Delinquency Fee	\$ 25	\$ 25
School application/processing fee	\$1500	\$3000
School site inspection - reinspect.	Direct cost	Direct cost
Tutorial supervision application and registration fee	\$ 200	\$ 200
Tutorial supervisor renewal fee	\$ 50	\$ 50
Tutorial trainee fee	\$ 25	\$ 25
Tutorial trainee renewal fee	\$ 10	\$ 10
Tutorial delinquency fee	\$ 5	50% of renewal

Revenue and Expenditure History

The AC's total revenue and expenditures appear to be fairly stable, and are approximately equal to each other resulting in a fairly stable fund balance. Expenditures (and revenue) for Fiscal Year (FY) 1997/98 will be approximately \$1.2 million. Projections by the AC show that its fund balance will vary somewhat year to year but will essentially remain stable projected through the FY 1999/2000, with somewhat over one year's (14 - 17 months) budget in reserve. Past and projected increases in expenditures appear moderate, except for an increase for the development and administration of the AC's licensure examination - resulting from changes made to the examination and the hiring of a new private exam contractor.

[Note: Because of problems with breaches of the AC's exam security prior to 1990, legislation enacted in 1989 and extended by legislation enacted in 1994 requires the AC to contract with independent consultants to administer its licensure examination.]

[See table below for the AC's overall revenues and expenditures:]

REVENUES	ACTUAL				PROJECTED	
	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Licensing Fees	\$ 1,250,490	\$ 1,183,118	\$ 1,155,997	\$ 1,139,486	\$ 1,122,305	\$ 993,000
Fines & Penalties	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Other	\$ 1982	\$ 3236	\$ 3552	\$ 59,792*	\$ 3,000	\$ 83,765*
Interest	\$ 32,000	\$ 81,000	\$ 94,000	\$ 106,786	\$ 79,000	\$ 53,000
ReimbursementS	\$42,794	\$ 38,474	\$ 40,023	\$ 26,635	\$ 33,000	\$ 33,000
TOTALS	\$ 1,327,266	\$ 1,305,828	\$ 1,293,572	\$ 1,332,689	\$ 1,237,305	\$ 1,162,765

EXPENDITURES	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Personnel Services	\$265,164	\$275,392	\$356,360	\$395,130	\$394,451	\$394,451
Operating Expenses	\$579,585	\$591,595	\$780,333	\$804,231	\$747,629	\$747,629
(-) Reimbursements	\$42,794	\$38,474	\$40,023	\$26,635	\$23460	\$23,460
TOTALS	\$887,543	\$905,461	\$1,176,693	\$1,225,996	\$1,165,540	\$1,165,540

Expenditures by Program Component

The AC notes that nearly 40% of its budget is expended on licensure examination expenses - \$331,043 for the examination development and administration by the independent contractor, plus additional related expenses to the AC (exam proctors, subject matter experts, AC member and staff support and attendance, etc.) for a total of \$515,056 projected for FY 97/98 (up from \$481,492 for FY 96/97).

Up to its May written license exam, the AC experienced significant complaints regarding the administration of its licensure examination, particularly the clinical portion thereof. Despite the hiring of a new exam contractor in the Summer of 1996, the AC continued to have problems with its Winter 96 clinical exam(December 1996 - administration security breach at exam site). As a result of the termination of the contract by its new exam contractor in April of 1997, the AC had to postpone its June clinical examination to August and hire another examination contractor. The results of that examination appear to indicate that most of the problems have now been resolved.

However, the exam contract costs have had to be increased requiring the AC to submit a Budget Change Proposal (BCP) to increase its expenditure authorization by approximately \$66,000 for the remaining exams (two written and one clinical) for the current FY 97/98, and an additional \$188,000 for next FY 98/99. Those BCPs are currently pending Administration approval. Given the past difficulties the AC has had with its exam, essentially its main program problem, and the successful administration of the August 1997 clinical exam, these proposed increases seemed justified.

The AC has sufficient fund reserves to absorb these increased costs. However, the committee indicates that its current, statutorily-prescribed exam fee of \$200 does not cover the AC's cost for administration of its exams, the costs of which are paid for from other revenues (primarily license and license renewal fees). The AC is recommending that it be given the statutory authority to set its examination fee at its actual cost, with the likelihood of reducing its license fees as a result.

[See table below for expenditures by program component]

EXPENDITURES BY PROGRAM COMPONENT	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 96/97 % Spent by Program
Enforcement	\$228,508	\$288,304	\$337,157	\$385,260	31%
Licensing	\$246,363	\$190,683	\$237,998	\$265,815	22%
Examination	\$318,861	\$359,662	\$521,952	\$481,492	39%
Administration	\$ 93,811	\$ 66,812	\$ 79,592	\$ 93,411	8%
TOTALS	\$ 887,543	\$905,461	\$1,176,693	\$1,225,996	100%

Fund Condition

As noted above, the AC's Fund Condition has been and is projected to remain relatively stable through FY 1999/2000. The committee's reserve was approximately \$1,691, 974 on June 30, 1997 (about 16.6 months in reserve.) This is projected to drop to \$1, 696.129 in FY 97/98 and \$1,614,321, in part due to the projected increase in examination costs. If the examination fee were to be raised to allow the AC to recover its actual costs related thereto, as is currently being proposed by the Ac, then it appears that it should also reduce its licensure fees so that it can reduce its fund balance. Currently the renewal fee for both active and inactive licensees is the same (\$325 biennially.) The AC is considering reducing the fee for issuing an inactive license in the future.

The AC's enforcement statistics are relatively low, though it does appear that there is a significant "underground economy" of unlicensed activity. If the AC were to increase its enforcement efforts (and obtain the necessary budget appropriation increase) to address these and other violations of the Acupuncture Licensure Act, with the concomitant increase in its enforcement costs, this increase would need to be taken into account in considering any future fee reductions.

**Ë Comparison of Revenues, Expenditures, and Reserves:
[See Table Below]**

ANALYSIS OF FUND CONDITION	FY 93-94	FY 95-96	FY 96-97	FY 97-98 (Projected)	FY 98-99 (Projected)	FY 99-2000 (Projected)
Adj. Total Reserves - July 1		\$1,543,829	\$1,611,916	\$1,691,974	\$1,696,129	\$1,614,231
Total Rev. & Transfers		\$1,253,361	\$1,306,054	\$1,203,155	\$1,281,102	\$1,263,155
Total Resources		\$2,797,190	\$2,917,970	\$2,895,129	\$2,977,231	\$2,877,386
Total Expenditures		\$1,177,469	\$1,225,996	\$1,199,000	\$1,363,000	\$1,210,000
Reserve, June 30	\$1,537,802	\$1,619,721	\$1,691,974	\$1,696,129	\$1,614,231	\$1,667,386
MONTHS IN RESERVE		15.9	16.6	17.0	14.2	16.5

LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

The requirements for licensure as an acupuncturist in California are:

- (1) Be at least 18 years old
- (2) Have furnished satisfactory evidence of one of the following:
 - (a) An educational and training program approved by the AC
 - (b) A tutorial program approved by the AC
 - (c) Equivalent educational training and clinical training experience for those applicants who have completed education and training outside the U.S. or Canada.
- (3) Passage of the AC's written and practical licensure examination (the California Acupuncture License Examination or CALE.)
- (4) Not be subject to license denial pursuant to B&P Code Section 475 et seq. (False statement or omission of material fact in application; conviction of a crime reasonably related to practice; conviction of an act of dishonesty, fraud or deceit; or commission of an act that would be a violation of the Acupuncture Act.)

Essentially there are three "pathways" - 2 (a),(b), or (c), above - to licensure. Pathway 2 (a) involves graduation from an approved acupuncture school or college with a specified minimum curriculum of 2,348 hours - 1,548 hrs. didactic/theoretical training and 800 hrs. supervised clinical training. Pathway 2 (b) involves 2,850 hours - 2,250 hrs. clinical training and 600 hrs. theoretical and didactic training. For pathway 2 (c) the AC has established specific requirements for applicants from China, Taiwan, Japan and Korea.

The AC has approved 22 acupuncture schools/training programs - 13 in California and nine in other states or a foreign country (England and Japan). There are currently two school applications pending AC approval (one in Texas and one in Southern California). The AC performs site visits to applicant schools as part of its approval process - for which the schools

must reimburse the AC its actual costs involved therein, in addition to a \$1500 school application and processing fee if the school is approved.

The AC also has established specific standards for acupuncture tutorial supervisors, and tutorial programs. Currently, there are approximately 35 approved tutorial supervisors, with about 40 acupuncture trainees. (Tutorial supervisors may train up to two trainees.) The AC has indicated it is proposing amendments to its regulations to upgrade the requirements for tutorial training to be more equivalent to that acquired by applicants who obtain their training from approved acupuncture schools.

Examinations and passage rates.

The required licensing examination is developed by the AC through contract with an independent consultant (required by law since 1990 until 1/1/2000.) It is the California Acupuncture Licensing Examination (CALE) and is a two part exam - one day written and one day clinical. The AC has worked closely with the Department of Consumer Affairs' Central Testing Unit (CTU) to assure that its exam is valid, and properly developed and administered. An occupational analysis for the licensing exam was last completed in 1996, and is done approximately every five years.

Cost of the two-part California examination is currently \$200. Commencing in 1996, the examination (both parts) were scheduled to be given twice a year rather than once a year - due to the increase in license applicants. Passage of the written examination is a prerequisite to entrance into the clinical exam, which follows the written exam by about six weeks. Examination results are to be provided to the examinees within three weeks (written) and 45 days (clinical). The examination is administered in four languages: English, Mandarin, Cantonese, and Korean.

The clinical exam is currently a four part exam involving: point location, diagnosis, herb identification and clean needle technique. The AC has proposed to eliminate the clean needle technique portion of the clinical exam commencing with the next administration of the clinical exam (1998) as no longer necessary. (Virtually every applicant passes this portion of the clinical exam.) Concurrently, the AC is proposing to amend its regulations to specifically require that the curricula at approved acupuncture schools and acupuncture tutorials cover clean needle technique - which will continue to be tested on the written portion of the licensure exam.

There is also a national examination given by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) - a private organization. The NCCAOM examination is given in two parts - an acupuncture exam and an herbal exam. Each part of the national exam costs \$800 - or a total of \$1600 for both parts. Except for California and Nevada which administer their own exam, all other states that require an acupuncture license exam accept passage of the national exam. Passage of the national exam is not a prerequisite to licensure in California, nor is it accepted as a substitute for passage of California's examination.

The passage rates for the California license examination were:

FY 96/97: Written: 90% (of 469 first time candidates) & 55%
(repeaters)
Clinical: 78% (of 298 first time candidates) & 83%
(repeaters)

This is an increase in passage from the two prior FYs, where the respective passage rates were: FY 95/96 - 69%/26% written & 64%/45% clinical; FY 94/95 - 65%/9% written & 58%/60% clinical.

Grandfathered licensees

Between the commencement of acupuncture licensure in California in October of 1976 to 1979, approximately 944 licensure applicants were "grandfathered" without taking a licensure examination. Of those, approximately 320 (34%) still have active/current licenses, 53 (6%) have current/inactive licenses, and 175 (16%) are in delinquent license status. The remaining 396 (42%) have either been canceled, revoked, or the licensee is deceased.

CALIFORNIA ACUPUNCTURE LICENSING EXAMINATION (CALE) <u>WRITTEN EXAM</u> PASS RATE				
YEARS	FIRST-TIME CANDIDATES		REPEAT CANDIDATES	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
1993/94	375	82%	154	36%
1994/95	335	65%	150	9%
1995/96	387	69%	184	26%
1996/97	469	90%	334	55%

CALIFORNIA ACUPUNCTURE LICENSING EXAMINATION (CALE) <u>CLINICAL EXAM</u> PASS RATE				
YEARS	FIRST-TIME CANDIDATES		REPEAT CANDIDATES	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
1993/94	No exam	No exam	No exam	No exam
1994/95	360	58%	235	60%
1995/96	542	64%	149	45%
1996/97	298	78%	136	82%

As mentioned previously, the licensing examination results are required to be provided to the examinees within three weeks (written) and 45 days (clinical). The average number of days between submission of an application to take an examination and the exam itself has been 130 days for the past three fiscal years. Currently, the deadline to apply for an examination is 120 days (4 months) prior to an examination. The AC reports that the average time between the exam and the reporting of its results to the examinees has been 40 days for the past four fiscal years. The AC's sunset report did not specify average time to process applications to take the examination or the time elapsed between an initial application and licensure of a successful examinee. Some applicants fail either the written or the clinical examination and must wait 6 months prior to taking the next examination. There is no limitation or conditions on the number of times an applicant may retake an examination.

The AC does have an exam appeals process for review applicant appeals regarding their examination results. The appeals are reviewed by the examination contractor and the AC, where issues such as ambiguous examination questions, possible multiple correct answers, administration errors or difficulties can be considered with adjustments made where appropriate to give additional credit to an examinee. Exam appeals decisions appear to be made within a

several weeks following the issuance of examination results. Given the several months between the clinical exam and the next written exam, this time frame appears to be reasonable following a clinical examination. However, given the shorter period between the written and clinical exams, it can present scheduling problems for candidates who appeal their written exam scores.

AVERAGE DAYS TO RECEIVE LICENSE	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Application to Examination	N/A	130 days	130 days	130 days
Examination to Issuance*	N/A	45 days	45 days	45 days
Total Average Days	N/A	175 days	175 days	175 days
*Time is from Exam to exam score notification. Licenses are issued within 2 to 6 weeks thereafter.				

Continuing Education/Competency Requirements

Acupuncture licensees are required to complete 30 hours of continuing professional education courses within each two year license renewal cycle. The courses must have received approval from the AC (\$150 provider approval fee.) Licensees must sign an affidavit attesting to completion of the required CE and their certificates of completion are subject to random audit by the AC. Current statute authorizes the AC to waive the CE requirements (i.e., issue a renewal license) if an applicant fails to complete any or all of the 30 hours of CE and require those hours to be completed during the subsequent two-year renewal period in addition to the 30 hours of CE required for that next period. A licensee who fails to complete all of the deficient and current required CE during the next license period may not renew his or her license again until all of those hours are completed. For the past few years the AC has not conducted any random audits citing shortage of necessary staff. However, the AC has recently implemented a program to perform a random audit of 1% of its licensees.

The AC sunset report did not identify how many licensees fail to complete the required CE, are granted a temporary waiver thereof to complete those required hours during the next renewal cycle, or whose licenses are delinquent as a result of a failure to complete all required CE. If it does not do so now, the AC may need to consider (through statutory change, if necessary) requiring all licensees who obtain a temporary (two year) waiver to produce certificates of completion for all required deficient and current CE prior to license renewal. This would allow the AC's CE audits to survey the licensees who do not seek a CE waiver but just submit affidavits of CE completion with the normal license renewals. If the AC determines that there is a significant compliance problem with the CE requirements, it may need to consider requiring all license renewals to be accompanied with a listing of all CE course completed or even copies of the certificates of completion therefor.

Comity/Reciprocity With Other States

Licensure in California as an acupuncturist requires completion of one of the three licensure "pathways" described previously. Regardless of which pathway is used, all current license applicants must pass both the written and clinical portions of the California Acupuncture

Licensing Exam. Applicants licensed in another state, and/or those who have passed the national NCCAOM examination must still pass California's licensing exam. There is no provision for a temporary California acupuncture license. As such, there is no reciprocity with other states.

The AC believes that its current licensing exam is an essential element in assuring that its licensees have acquired minimum practice competency. Development of the examination involves subject matter experts (SMEs) who are current practitioners and generally who have received their license within the past five years so as to be current on current acupuncture education. A great deal of effort, through the efforts the AC, the AC's exam contractor and the department's CTU goes into the development and administration of the California licensing exam.

The AC does not believe that passage of the national NCCAOM exam, which has just recently added the testing of herbs, provides sufficient assurance of professional competence. However, the AC has been in contact with the NCCAOM regarding its examination and plans to observe its next administration in California as part of an effort to consider whether all or a portion thereof may be used as part of license qualification in California in the future. Aspects, such as the use of computer testing for some parts of the clinical exam (e.g., acupuncture point location which is currently performed using human models) is being reviewed as well for future use.

California's written license examinations generally are conducted in Northern California, while its clinical examinations generally are conducted in Southern California (Los Angeles) due to the concentration of license applicants from that area and the availability of an appropriate test site for the clinical exam. Since it is inconvenient and costly for some license applicants to travel to Los Angeles to take both the written and clinical portions of the current California exam, the AC should consider whether the use of computer testing, as has or is being implemented by other California licensing agencies, could be used to facilitate more frequent and geographically convenient administration of its exam.

ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Inquiries	Not tracked	Not tracked	Not tracked	Not tracked
Complaints Received (Source)	Total: 61	Total: 50	Total: 50	Total: 114
Public	-----	-----	-----	-----
Licensees	-----	-----	-----	-----
Other	-----	-----	-----	-----
Complaints Handled Informally (by AC staff) (By Type)	Total: 108	Total: 43	Total: 52	Total: 96
InCompetence/Negligence	9	6	6	4
Unprofessional Conduct	76	19	23	48
Fraud	7	6	3	12
Health & Safety	0	0	0	1
Unlicensed Activity	12	5	13	26
Personal Conduct	4	4	2	1
Other	0	0	3	2
Nonjurisdictional	0	3	2	2
Complaints Handled Formally (sent to investigation) (By Type)	Total 70	Total 27	Total 30	Total 17
Fraud	4	4	2	1
Incompetence/Negligence	3	4	5	0
Personal Conduct	3	3	1	1
Unprofessional Conduct	54	14	17	10
Unlicensed Activity	6	2	5	5
Complaints Dismissed	Total: n/a	Total: n/a	Total: n/a	Total n/a
Compliance Actions	Total: 10	Total: 11	Total: 13	Total: 25
ISOs & TROs Issued	0	0	0	0
Citations and Fines	0	0	0	0
Cease & Desist/Warning	10	11	13	25
Investigations Commenced	Total: 69	Total: 39	Total: 13	Total: 21
Referred for Criminal Action	Total: n/a	Total: n/a	Total: n/a	Total: n/a
Referred to AG's Office	Total: 70	Total: 416	Total: 510	Total: 567
Accusations Filed	407	353	262	296
Accusations Withdrawn	41	69	67	57
Accusations Dismissed	13	10	12	11

Stipulated Settlements	Total: 87	Total: 73	Total: 68	Total: 68
Disciplinary Actions*	Total: 206	Total: 307	Total: 274	Total: 278
Revocation	62	65	62	49
Voluntary Surrender	28	62	52	87
Suspension Only	0	2	1	0
Probation with Suspension	39	34	29	27
Probation	75	141	129	112
Probationary License Issued	2	3	1	3
Probation Violations**	Total: 10	Total: 14	Total: 17	Total: 14
Suspension or Probation	3	7	5	4
Revocation or Surrender	7	6	8	14
*The total number of "Disciplinary Actions" by the Board are those in which either license revocation, voluntary surrender of the license, suspension with or without probation, probation, or a probationary license was issued.				
**The total number of "Probation Violations" reflects the total number of petitions filed to revoke probation.				

Enforcement Program Overview

The responsibility for the actual processing of complaints was transferred to the AC about three years ago. Prior to that time the Medical Board processed and investigated acupuncture-related complaints.

The AC notes that it does not have an automated complaint-intake process but processes complaints manually through receipt of written complaints. The AC receives only a small number of complaints, between 50 and 114 (the latter for FY 96/97.) About half of these come from the public with the remainder emanating from the profession itself or other government/law enforcement agencies. The largest number of complaints (FY 96/97) involve professional misconduct (58), followed by unlicensed activity (31) and fraud (13). Few complaints (4) appear to involve incompetence or negligence. The AC participates in the Department of Consumer Affairs' (DCAs') computer complaint tracking system - the Consumer Affairs System (CAS). The AC notes that the CAS codes have not been sufficiently specific to track prevalent practice abuses. However, as of July 1, 1997, new complaint categories have been added to the system including sexual abuse, mental/physical impairment, drug-related offenses, unsafe/unsanitary conditions, criminal charges/convictions, and discipline by another state agency.

Because of the inability of the CAS system to capture all the various types of needed enforcement data that can be useful to all licensing agencies within the DCA, the department is planning to eliminate the CAS and acquire a whole new computer system in a couple of years - known as the Integrated Consumer Protection System (ICPS). The cost estimate for the AC's participation in the ICPS currently is projected to be \$177,890. The overall costs to the licensing boards within the DCA for the ICPS currently are projected to be \$6,994,150.

Most of the AC's complaints are handled informally by the AC staff (96 during FY 96/97) through mediation or through the issuance of cease and desist letters (unlicensed activity - 25 in FY 96/97). The AC has had administrative citation and fine authority since 1995, but has not issued any since that time, citing compliance with its informal complaint resolution processes as the primary reason and lack of staff resources. Complaints determined to contain allegations that warrant disciplinary action (e.g., sexual misconduct, gross negligence/incompetence, fraud) are referred for investigation by an investigator from the Department of Consumer Affairs' Division of Investigation (DOI).

The AC believes that there is a significant number of violations that are not reported to it in part because of the cultural values and diversity of, and fear of retaliation by, a large portion of the population using acupuncture (primarily Asian ethnic background.) This is believed to be particularly the case with respect to instances of unlicensed activity and false advertising. The AC has no statutory reporting requirements for health plans or health facilities related to practice by its licensees.

The AC sunset report notes a number of impediments to its program operation that particularly relate to its enforcement efforts. These include insufficient staff resources to perform: license-renewal certifications for required course work, oversight of continuing education courses (e.g., site visits), implementation of administrative citations and fines; lack of authority and staff to inspect acupuncture offices/clinics; and time delays and inadequate knowledge of acupuncture at the DOI; and lack of available training of AC staff in the DCA's computer enforcement tracking system and codes.

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
COMPLAINTS RECEIVED	7,902	11,465	11,497	10,123
Complaints Dismissed	5,614 (71%)	11,058(96%)	9,751 (85%)	8,161 (81%)
Referred for Investigation	2,046 (26%)	2,041 (18%)	1,998 (17%)	2,039 (20%)
Accusation Filed	407 (5%)	353 (3%)	262 (2%)	296 (3%)
Disciplinary Action	206 (3%)	307 (3%)	274 (2%)	278 (3%)

Case Aging Data

The committee's report notes that its investigative process generally takes up to two years, and in some few cases even longer. For the past four fiscal years, there have been 142 investigations commenced on disciplinary cases (21 during FY 96/97). During that same period 144 investigations were completed (17 during FY 96/97) and there were 16 investigations still pending at the end of FY 96/97. The average completion time for all investigations over the past four fiscal years has ranged from 290 days (FY 93/94) to 454 days (FY 95/96), with the average being 355 for FY 96/97.

Of the 17 investigations completed during FY 96/97, 11 were completed between 180 to 365 days, two cases were completed between 1-2 years, and two cases took 2-3 years to complete. There have been a total of 15 license revocations within the past four fiscal years (only one in FY 96/97, with three revocations stayed and probation imposed). During that same four year period there were 24 license probations. In part the AC cites time delays by, and the lack of knowledge of acupuncture law and practice on the part of investigators of DOI as one reason for the long investigative time period on its cases.

Post-investigation completion data for the AC shows that for FY 96/97, there were nine pre-accusation cases pending at the AG' - with three being 0-90 days old, two being 91-180 days old, two being 1-2 years old, one being 2-3 years old and one being over 3 years old. Statistics for post-accusation filing cases at the AG, 17 altogether during FY 96/97 show that one was 0-90 days old, one was 1-2 years old, two were from 2-3 years old and 13 were older than 3 years. Statistics for FY 96/97 also reflect that a total of five cases were referred to the AG, four accusations were completed, and 26 cases are still pending there.

Generally, the AC's statistics appear to show that while complaints filed with the committee have increased in FY 96/97, more of those complaints are resolved informally, the number of investigations have increased moderately, the number of investigations completed have decreased somewhat, the time for investigation completion has gone down, and the number of investigations still pending (16) is relatively stable over the previous year. The number of pre-accusation and post-accusation cases are relatively stable, though it appears that at least some of the older post-accusation cases at the AG are taking longer to complete. Overall, the AC reports the closure of six administrative disciplinary cases during FY 96/97, of which two took 4 years, three took 2 years, and one took one year to complete. This is a decrease from 18 case closures in FY 95/96.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Complaint Processing	n/a	n/a	n/a	n/a
Investigations	290	409	454	355
Pre-Accusation*	n/a	n/a	n/a	n/a
Post-Accusation**	n/a	n/a	n/a	n/a
TOTAL AVERAGE DAYS***	972	1,381	1,173	977
*From completed investigation to formal charges being filed. **From formal charges filed to conclusion of disciplinary case. ***From date complaint received to date of final disposition of disciplinary case. " n/a " information was unavailable or not provided				

INVESTIGATIONS CLOSED WITHIN:	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97	AVERAGE % CASES CLOSED
90 Days	219 (10%)	282 (14%)	454 (22%)	505 (22%)	17%
180 Days	294 (14%)	198 (10%)	199 (9%)	289 (13%)	12%
1 Year	533 (25%)	417 (21%)	396 (19%)	450 (20%)	21%
2 Years	746 (33%)	658 (33%)	544 (28%)	521 (23%)	29%
3 Years	249 (21%)	305 (15%)	313 (15%)	302 (13%)	16%
Over 3 Years	75 (10%)	115 (5%)	128 (6%)	182 (8%)	7%
Total Cases Closed	2,116	1,975	2,034	2,249	
AG CASES CLOSED WITHIN:	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97	AVERAGE % CASES CLOSED
1 Year	100 (28%)	109 (21%)	153 (32%)	222 (44%)	31%
2 Years	118 (33%)	186 (36%)	146 (30%)	139 (27%)	31%
3 Years	76 (21%)	114 (22%)	93 (20%)	67 (13%)	19%
4 Years	35 (10%)	61 (12%)	47 (9%)	46 (9%)	10%
Over 4 Years	29 (8%)	47 (9%)	36 (7%)	35 (6%)	8%
Total Cases Closed	358	517	475	509	
Disciplinary Cases Pending	920	719	605	539	

Cite and Fine Program

The AC has had administrative citation and fine authority since 1995, but has not issued any, citing compliance with its informal mediation and cease and desist letters, and the lack of adequate staffing.

CITATIONS AND FINES	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Total Citations	0	1	62	141
Total Citations With Fines	3	56	90	73
Amount Assessed	\$1,750	\$59,350	\$60,050	\$60,080
Reduced, Withdrawn, Dismissed	\$500	\$34,050	\$20,800	\$16,650
Amount Collected	\$1,250	\$25,300	\$35,000	\$29,050

Diversion Program

The AC does not have a diversion program for licensees that have alcohol or drug abuse problems.

Results of Complainant Survey

The JLSRC directed all board's and committees under review this year to conduct a consumer satisfaction survey to determine the public's views on certain case handling parameters by those agencies. The JLSRC supplied both a sample format and a list of seven questions, and indicated that a random sampling should be made of consumers whose complaints were closed in FY 96/97. Consumers who filed these complaints were asked respond to the questions using a 5-point grading system - with 5=satisfied to 1=dissatisfied.

The AC mailed out 98 surveys, received responses from 20 of those, with 56 persons not responding and 22 surveys returned as undeliverable. Overall results reflected that 45% were satisfied (5 points) while 50% indicated dissatisfaction (1 point). However, the AC notes that the majority of those expressing dissatisfaction submitted their complaints three to ten years ago, while those submitting complaints within the past three years seem generally more satisfied (though the number of these that were returned were fewer than those in the dissatisfied group.)

CONSUMER SATISFACTION SURVEY RESULTS*						
QUESTIONS		RESPONSES				
# Surveys Mailed: 721 # Surveys Returned: 322 (45%)		SATISFIED		DISSATISFIED		
		<u>5</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>
1. Were you satisfied with knowing where to file a complaint and whom to contact?		43%	21%	13%	5%	17%
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?		34%	22%	13%	8%	23%
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?		21%	12%	14%	8%	44%
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?		19%	12%	17%	11%	40%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?		19%	11%	12%	11%	45%
6. Were you satisfied with the final outcome of your case?		10%	7%	4%	6%	69%
7. Were you satisfied with the overall service provided by the Board?		16%	11%	14%	12%	46%
*The JLSRC directed all board’s and committee’s under review this year, to conduct a consumer satisfaction survey to determine the public’s views on certain case handling parameters. (The Department of Consumer Affairs currently performs a similar review for all of its bureau’s.) The JLSRC supplied both a sample format and a list of seven questions, and indicated that a random sampling should be made of closed complaints for FY 1996/97. Consumers who filed complaints were asked to review the questions and respond to a 5-point grading scale (i.e., 5=satisfied to 1=dissatisfied).						

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Average Costs for Disciplinary Cases

The total annual enforcement costs of the AC have increased about \$100,000 over the past four fiscal years - from \$221,285 in FY 93/94 to 315,670 in FY 96/97. The majority of the cost increases are attributable to increased costs for investigation (appx. \$130,000 increase from \$58,227 in FY 93/94 to \$189,842 in FY 96/97.) Annual costs for services of the AG have decreased during that same period, as have the costs attributable to hearings conducted by Administrative Law Judges from the Office of Administrative Hearings and those attributable for

expert witnesses. AC statistics also reflect that the average cost per case by the AG (\$3,316 for FY 96/97) has decreased somewhat over the prior two fiscal years.

AVERAGE COST PER CASE INVESTIGATED	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Cost of Investigation & Experts	\$12,712,000	\$13,263,000	\$12,916,000	\$11,834,000
Number of Cases	2,231	1,988	2,043	2,255
Average Cost Per Case	\$5,697	\$6,672	\$6,322	\$5,247
AVERAGE COST PER CASE REFERRED TO AG	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Cost of Prosecution & Hearings	\$7,021,000	\$7,793,000	\$8,162,000	\$7,545,000
Number of Cases	607	416	510	567
Average Cost Per Case	\$11,567	\$18,733	\$16,003	\$13,306
AVERAGE COST PER DISCIPLINARY CASE	\$17,264	\$25,405	\$22,325	\$18,553

Cost Recovery Efforts

B&P Code Section 125.3 authorizes licensing agencies within the Department of Consumer Affairs to recover from licensees the reasonable costs of investigation and enforcement (including the costs of prosecution by the AG up to the time of administrative hearing, if any.) The cost recovery statistics for the AC are reported in the table below in comparison with the amount of its disciplinary enforcement costs. The AC's cost recovery amounts have been fairly low, with a high of \$27,060 ordered in FY 95/96, and \$15,949 ordered in FY 96/97. Of the amounts actually collected for the past four fiscal years the high was \$13,900 in FY 94/95, and were \$6,550 in FY 96/97. The AC notes that the amount of cost recovery ordered usually is allowed to be paid during the term of probation which can span over three to five years. For the past four fiscal years, the cost recovery collected as a percentage of the AC's total enforcement costs has ranged from a high of 5.6% in FY 94/95 to 2.1% for FY 96/97.

COST RECOVERY DATA	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Enforcement Expenditures	\$21,668,000	\$23,220,000	\$23,519,000	\$22,935,000
Potential Cases for Recovery*	206	309	274	278
Cases Recovery Ordered				
Amount Collected	\$95,000	\$205,000	\$458,000	\$759,000

*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the Medical Practice Act.

RESTITUTION PROVIDED TO CONSUMERS

The AC reports that it does not have, and is not currently considering, any restitution policy - believing that restitution is not applicable to the acupuncture profession. Therefore no restitution to consumers was reported by the board.

RESTITUTION DATA	FY 1993/94	FY 1994/95	FY 1995/96	FY 1996/97
Amount Ordered	N/A	N/A	N/A	N/A
Amount Collected	N/A	N/A	N/A	N/A

COMPLAINT DISCLOSURE POLICY

The AC reports that disciplinary information regarding a licensee is available to the public, upon request, after an accusation is filed by the Attorney General. The only information disclosed is that contained in the accusation (name, license number, nature of violation, disposition, if any) The AC did not report whether it informs the public regarding its issuance of cease and desist letters (to unlicensed practitioners or regarding unlawful advertising.)

CONSUMER OUTREACH AND EDUCATION

The AC did not report any specific consumer outreach or educational efforts regarding the practice of acupuncture or its jurisdiction as the state's licensing agency for acupuncturists. The AC publishes about one newsletter per year, sent to all of its licensees, that covers significant changes in the law, particular requirements of the law, various activities or actions by the AC, disciplinary actions against its licensees (including names & license nos.), and a list of licensees whose licenses have lapsed and been canceled.

2.

IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE ACUPUNCTURE COMMITTEE

ISSUE #1. Should the licensing of acupuncturists be continued?

Recommendation: *Both the Department and Committee staff recommended the continued licensure of acupuncturists.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: Regulation of acupuncturists appears necessary given the unique modalities employed in their profession and the serious services they perform directly with patients. Acupuncturists provide primary health care and alternative, complementary health care to their patients - reflecting a different philosophy than western-trained, allopathic physicians and other health care professionals. Many other states also have recognized acupuncture as a unique profession, separate and distinct from allopathic medicine, and acupuncture is recognized and accepted in California's Medi-Cal and workers' compensation programs. Acupuncturists diagnose, administer treatment, and prescribe various treatments and herbs to promote their patients health.

ISSUE #2. Should the Acupuncture Committee be retained as the state's licensing agency for acupuncturists and under the jurisdiction of the Medical Board, be merged or independent of the Medical Board, or should its operations and functions be assumed by the Department of Consumer Affairs?

Recommendation: *Both the Department and Committee staff recommended that the Acupuncture Committee should continue to be the agency responsible for the regulation of the practice of acupuncture, and the name of the Acupuncture Committee be changed to the "Acupuncture Board." Committee staff recommended that the sunset date of the Acupuncture Committee be extended for four years (to July 1, 2003). Committee staff also recommended placing a sunset date of two years (July 1, 2000) on the jurisdiction of the Medical Board over the Acupuncture Committee.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Acupuncture Committee currently exercises virtually all of the state licensing and regulatory functions related to the independent practice of acupuncture. The only statutorily specified role remaining for the Medical Board is to approve the adoption, amendment or repeal of the Acupuncture Committee's regulations - essentially a vestige of when acupuncture used to be regulated by the predecessor to the current Medical Board. Such regulations are developed by the Acupuncture Committee, proposed and subjected to public hearing, and then still subject to review by the Department of Consumer Affairs and the Office of Administrative Law (OAL) to assure that the regulatory action is appropriate, necessary, and within the Acupuncture Committee's statutory authority. If the Medical Board believes that it needs to be specifically apprised of the Acupuncture Committee's regulatory proposals, it could simply request being placed on its mailing list for notification - and the opportunity to provide comment at the required public hearings prior to any regulatory adoption. Further, the current membership of the Acupuncture Committee includes two licensed physicians who could provide a physician viewpoint and expertise to their policy deliberations.

The statutory statement that the Acupuncture Committee is "within the jurisdiction of the board" is at best ambiguous and apparently has not led to any efforts in the past to rectify operational problems (such as the 1989 scandal where a member of the Committee was convicted of selling the licensing examination - which led the Legislature to step in and enact the requirement for use of an independent exam contractor.)

Changing the Acupuncture Committee's name from "Committee" to "Board" would be consistent with changes that have been made over the past few years with the other allied health profession licensing agencies of the department (e.g., Respiratory Care Board.) Such a name change would better inform the public and the licensees that the Committee is the state's official licensing entity for acupuncture and prevent confusion with private professional organizations.

The Acupuncture Committee appears to be capable of functioning as an independent licensing agency, as reinforced by its assumption of the complaint processing functions formerly performed by the Medical Board until three years ago. Given the rather unique nature of acupuncture within the healing arts - having a separate, independent agency appears warranted - and there does not appear to be any significant benefits to be gained from merging the regulation of acupuncture into the Medical Board or the department at this time.

ISSUE #3. Should the scope of practice for acupuncturists be expanded? Should the Acupuncture Committee regulate "herbalists" in California?

Recommendation: *Both the Department and Committee staff recommended that all proposals to further expand the scope of acupuncture practice should be evaluated on a*

case-by-case basis and subjected to the requirement of “sunrise” review. As to regulating “herbalists,” it was recommended that further study be done, including an evaluation of the problems with other professions and oversight by other state and federal agencies.

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Acupuncture Committee's sunset report notes that acupuncturists are considered primary health care providers in California's workers' compensation system, and that the scope of acupuncture practice is currently fairly broad. Prior to any proposal to increase the scope of permissible practice for acupuncturists the Committee and the profession should adequately demonstrate that licensees possess the necessary training and competence. Any proposals to further expand the scope of acupuncture practice should be evaluated on a case by case basis, and subjected to the requirement to complete a “sunrise” questionnaire.

The Acupuncture Committee notes that some serious health problems have happened to persons from the use of certain herbs. However, these do not appear to be related to treatment by licensed acupuncturists but rather from self-administration by the individuals involved. While the Acupuncture Committee and the profession should be concerned about regulatory efforts in this area (notably by the federal Food and Drug Administration), as they might affect the practice of acupuncturists' use of herbs, this issue seems broader than just regulation of "herbalists." Prior to any proposal to regulate "herbalists" the Acupuncture Committee should thoroughly evaluate the problems, overlap with other professions, and oversight by other state and federal agencies.

ISSUE #4. Should the size or composition of the Acupuncture Committee be changed?

Recommendation: *The Department generally recommends a public member majority and an odd number of members for regulatory boards. For the Acupuncture Committee, the Department recommended a balanced composition of the membership consistent with those guidelines. Committee staff concurred and recommended reducing the size of the Acupuncture Committee to 9 members, with 4 acupuncturists, 4 public members and 1 physician.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: There are a majority of professionals (7) on the 11 member Acupuncture Committee: 5 licensed acupuncturists, 2 physicians with acupuncture experience, and 4 public members. However, one of the two physician member positions has been vacant for several years. Apparently the Acupuncture Committee has been able to function without this member. The number of members on this committee is also larger than most committees or boards with a similar number of licensees to regulate. Further, given the past problems experienced by the Committee regarding its examination program, and the perception of the

public as to professionally controlled boards, decreasing the professional representation on the Acupuncture Committee by two (2), may increase public confidence in future actions taken by this Committee if granted independent jurisdiction from the Medical Board.

The primary rationale for professional members on licensing boards is their understanding of the profession which they regulate. However, having the profession in control of the board can lead to promotion of self-interest rather than the protection of the public's health and welfare - the primary purpose of state occupational regulation. Reducing the size of the board and increasing the public control thereon, while maintaining sufficient membership from the regulated profession to provide expertise, could reduce unnecessary costs and assure that the public's interest is the Acupuncture Committee's foremost concern. Besides its professional members, the Acupuncture Committee obtains professional expertise by contracting with subject-matter professionals for the development of its examination; and the various professional organizations and acupuncture schools appear to actively participate in the Acupuncture Committee's public meetings.

Regardless of the particular background of its members, it appears that the ability of a state licensing agency, such as the Acupuncture Committee, to perform its administrative functions in a responsible manner, relies primarily on the quality of the appointed members and the executive officer, and their dedication and effort to protect the public. This aspect of licensing agency performance, rarely focused on in reviews of licensing agency performance, relies upon careful selection by the appointing authority (Governor and Legislature), and reasonable training of members in the proper performance of their duties - the latter function provided currently to all board members by the Department of Consumer Affairs.

ISSUE #5. Should any changes be made to the Acupuncture Committee's licensure examination? Should the current state examination be eliminated in whole, or in part, and replaced with a national examination to meet the requirements for licensure?

Recommendation: *Both the Department and Committee staff recommended that the California's written and practical examination (the California Acupuncture Licensing Examination - CALE) should be retained for now, but that the Acupuncture Committee should continue evaluating the national exam, given the time, effort and cost involved in providing the State CALE exam. The requirement that the Acupuncture Committee contract with an independent consultant to develop and administer its examination should also be retained.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Acupuncture Committee should obtain the necessary expenditure authority, preferably through the Budget Change Proposal process, to retain its current exam consultant through FY 1998/99. The Acupuncture Committee should continue to evaluate and observe administration of the national exam to determine if all, or part of it, might be used to replace the CALE exam. The Acupuncture Committee should also evaluate, to what extent, its

licensing examination could be offered through computer testing to increase its availability to license applicants and reduce the costs of the examination. The Acupuncture Committee should substantiate the costs involved for its examination and pursue authority to have those costs borne more by the examinees, rather than subsidizing the exam from other revenue sources such as license and renewal fees.

The biggest problem the Acupuncture Committee faced in the past two years, concerned both the substance and the administration of its licensing exam. This is especially true for its clinical examination. After numerous complaints were received from examinees, especially those sitting for the 1996 exams, and the threat of legal action, the Acupuncture Committee made concerted efforts to improve both the quality and the administration of its clinical examination. It appears as if the recent August 1997 clinical exam was administered with a minimum of problems, following the hiring of the latest exam consultant earlier this year, and the Committee's efforts to work closely with the consultant to eliminate problems which were identified with previous exams. However, administering its own clinical exam is a very complex and burdensome task, that appears to be successful only with a great deal of dedicated effort and coordination between the Committee and its exam consultant.

The licensing revenues of the Acupuncture Committee appear to subsidize the Committee's examination costs. Its current \$200 examination fees appear to provide insufficient revenue to cover its contract and staff costs for the examinations. The Committee should consider seeking authority to increase the examination fee. However, with over one year of fund reserve, the Committee should also consider reducing its license fees correspondingly.

Given the effort and increasing cost involved for California's exam, careful evaluation of the national NCCAOM exam, as at least a partial alternative, and the possibility of utilizing computer testing to increase applicant access seem advisable.

ISSUE #6. Should licensees be required to display their licenses for the public and provide their names and license numbers in any advertisement of their services?

Recommendation: *The Department did not address this issue. Committee staff recommended that those licensed by the Acupuncture Committee be required to display their licenses in the locality in which they are treating patients, and provide their names and license numbers in advertising of their services.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: While the feasibility and logistics of displaying a license may vary with the practice setting of the licensee (a private office versus a clinic or other health facility, for example), it is imperative that consumers know that a practitioner is licensed/regulated by a state agency. The Acupuncture Committee also indicates that it is often difficult to determine

whether a particular acupuncture practice is conducted by a licensee of the Committee given the use of names in advertisements that differ from those recorded with the Committee. The laws of other licensed professions or occupations often require that the license be publicly posted in the practice location, and that the license number of the licensee be placed in any advertising or contracts. This informs the public that a particular individual is licensed by the state and facilitates identification of the licensee by the licensing agency.

ISSUE #7. Should the delinquent license penalty fee be increased by the Acupuncture Committee?

Recommendation: *The Department did not address this issue. Committee staff recommended increasing the delinquent license penalty fee (currently \$25), given the apparent high number of delinquent licensees who fail to renew their licenses.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Acupuncture Committee's statistics indicate that there are about 400 delinquent licensees (out of a total active licensee population of approximately 4000 licensees). This appears to be fairly high, and if such delinquencies persist for a long time - increasing the delinquency penalty may promote increased compliance. Other licensing agencies in the department have higher penalties, or penalties that increase over time, as a means to enforce timely license renewals.

ISSUE #8. Should changes be made regarding the current continuing education requirements?

Recommendation: *This issue was not addressed by the Department. Committee staff recommended that the Acupuncture Committee's current authority to grant two year waivers of the 30-hour continuing education prerequisite for license renewal should be limited, and only include circumstances of dire need or circumstances beyond the control of the licensee (e.g., serious illness).*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: Currently there are no specified grounds for the Acupuncture Committee's granting of a two-year waiver of the 30 hours of required continuing education. Consequently, there is no standard as to whether such requests are justified. Also, the Committee has not performed audits of compliance with this requirement, or whether the licensee makes up the required continuing education prior to the next renewal cycle (though it has recently implemented a program to conduct a random audit of 1% of its licensees.) To assure compliance with, and impartial application of the continuing education requirement

(presuming that continuing education truly enhances professional competence) - some limitations or standards for the grant of such waivers by the Committee should be considered.

ISSUE #9. Should acupuncture schools be required to obtain approval from the Bureau of Private Postsecondary and Vocational Education (formerly the Council on Private Postsecondary and Vocational Education (CPPVE), or similar governmental approval if located outside of California, prior to obtaining Acupuncture Committee approval, as recommended by the Committee?

Recommendation: *Department did not address this issue. Committee staff concurred with the Acupuncture Committee, that the Bureau of Private Postsecondary and Vocational Education, or similar approval, should be a prerequisite for the Acupuncture Committee approval in the future. However, this requirement should not be applied to schools which already have received temporary Acupuncture Committee approval based on "conditional" former CPPVE approval.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Acupuncture Committee recommended prior approval by the Bureau of Private Postsecondary and Vocational Education. The Committee states that if it approves new acupuncture schools that have only obtained "conditional approval" from the CPPVE (which can last two years), then students (whose acupuncture training can take three years to complete) are in jeopardy if that school fails to obtain final CPPVE approval and consequently loses the Acupuncture Committee's approval before the student graduates. The Committee argues that this would require students to transfer to an approved school and possibly lose some credit for coursework already completed at their first school.

ISSUE #10. Should the time period in which a acupuncture graduate may practice acupuncture in a supervised postgraduate review course, without obtaining a license, be extended from three to six months as recommended by the Acupuncture Committee?

Recommendation: *Department did not address this issue. Committee staff concurred with the Acupuncture Committee, that the acupuncture school graduate be able to practice in postgraduate supervised review courses without a license for six months rather than just three.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Acupuncture Committee recommended the additional three months for postgraduate supervised practice without a license. The Committee believes that extending the time period for unlicensed practice in a supervised postgraduate review course is

reasonable given the six months period that exists between licensing exams. Extending the postgraduate training exemption would enable students who have graduated, but are awaiting the examination (or reexamination if they've once failed), to practice during the interim period between the exams. The supervised nature of the postgraduate course training is believed to provide adequate protection to patients during that period.